

(b) State standards or regulations which afford a higher degree of protection

The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation is in effect under this chapter and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this chapter.

(c) Exemption for State standards or regulations; requirements; determination of burden on interstate commerce; notice and hearing

(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a) of this section, under such conditions as may be prescribed in such regulation, any flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this chapter, if—

(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this chapter, and

(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this chapter for such fabric, related material, or product.

(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(d) Flammability standards or regulations; definitions

For purposes of this section—

(1) a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this chapter includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90-189); and

(2) the term “Commission” means the Consumer Product Safety Commission.

(June 30, 1953, ch. 164, §16, as added Pub. L. 90-189, §10, Dec. 14, 1967, 81 Stat. 574; amended Pub. L. 94-284, §17(b), May 11, 1976, 90 Stat. 512.)

REFERENCES IN TEXT

Section 11 of the Act of December 14, 1967 (Public Law 90-189), referred to in subsec. (d)(1), is set out as a note under section 1191 of this title.

AMENDMENTS

1976—Pub. L. 94-284 substituted provisions which permitted the use of flammability standards or regulations not identical with the standards or regulations in effect under this chapter provided that the standards or regulations used afford a higher degree of protection from the risk of the occurrence of fire than the standards or regulation under this chapter, and which permitted the Commission, by regulation promulgated in accordance with section 553 of title 5, to grant an exemption for a flammability standard or other regulation of a State or political subdivision of a State, for the prior supremacy of chapter provision.

§ 1204. Congressional veto of flammability regulations

(a) Transmission to Congress

The Consumer Product Safety Commission shall transmit to the Secretary of the Senate and the Clerk of the House of Representatives a copy of any flammability regulation promulgated by the Commission under section 1193 of this title.

(b) Disapproval by concurrent resolution

Any regulation specified in subsection (a) of this section shall not take effect if—

(1) within the ninety calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, both Houses of the Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows (with the blank spaces appropriately filled): “That the Congress disapproves the flammability regulation which was promulgated under the Flammable Fabrics Act by the Consumer Product Safety Commission with respect to _____ and which was transmitted to the Congress on _____ and disapproves the regulation for the following reasons: _____.”; or

(2) within the sixty calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, one House of the Congress adopts such concurrent resolution and transmits such resolution to the other House and such resolution is not disapproved by such other House within the thirty calendar days of continuous session of the Congress which occur after the date of such transmittal.